CIRCUIT RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

(As of September 22, 1999)

Circuit Rule 1. Scope of Rules

These rules govern procedure in the United States Court of Appeals for the Seventh Circuit. They are to be known as the Circuit Rules of the United States Court of Appeals for the Seventh Circuit.

Circuit Rule 2. Suspension of Circuit Rules

In the interest of expediting decision or for other good cause, the court may suspend the requirements of these Circuit Rules.

Circuit Rule 3. Notice of Appeal, Docketing Fee, Docketing Statement, and Designation of Counsel of Record

(a) *Forwarding Copy of Notice of Appeal*. When the clerk of the district court sends to the clerk of this court a copy of the notice of appeal, the district court clerk shall include any docketing statement. In civil cases the clerk of the district court shall include the judgments or orders under review, any transcribed oral statement of reasons, opinion, memorandum of decision, findings of fact, and conclusions of law. The clerk of the district court shall also complete and include the Seventh Circuit Appeal Information Sheet in the form prescribed by this court.

(b) *Dismissal of Appeal for Failure to Pay Docketing Fee*. If a proceeding is docketed without prepayment of the docketing fee, the appellant shall pay the fee within 14 days after docketing. If the appellant fails to do so, the clerk is authorized to dismiss the appeal.

(c)(1) *Docketing Statement*. The appellant must serve on all parties a docketing statement and file it with the clerk of the district court at the time of the filing of the notice of appeal or with the clerk of this court within seven days of filing the notice of appeal. The docketing statement must comply with the requirements of Circuit Rule 28(a). If there have been prior or related appellate proceedings in the case, or if the party believes that the earlier appellate proceedings are sufficiently related to the new appeal, the statement must identify these proceedings by caption and number. The statement also must describe any prior litigation in the district court that, although not appealed, (a) arises out of the same criminal conviction, or (b) has been designated by the district court as satisfying the criteria of 28 U.S.C. §1915(g). If any of the parties to the litigation appears in an official capacity, the statement must identify the current occupant of the office. The docketing statement in a collateral attack on a criminal conviction must identify the prisoner's current place of confinement and its current warden; if the prisoner has been released, the statement must describe the nature of any ongoing custody (such as supervised release) and identify the custodian. If the docketing statement is not complete and correct, the appellee must provide a complete one to the court of appeals clerk within 14 days after the date of the filing of the appellant's docketing statement.

(2) Failure to file the docketing statement within 14 days of the filing of the notice of appeal will lead to the imposition of a $100 fine on counsel. Failure to file the statement within 28 days of the filing of the notice of appeal will be treated as abandonment of the appeal, and the appeal will be dismissed. When the appeal is docketed, the court will remind the litigants of these provisions.

(d) *Counsel of Record*. The attorney whose name appears on the docketing statement or other document first filed by that party in this court will be deemed counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown, the attorney who is counsel of record must be clearly identified. (There can be only one counsel of record.) If no attorney is so identified, the court will treat the first listed as counsel of record. The court will send documents only to the counsel of record for each party, who is responsible for transmitting them to other lawyers for the same party. The docketing statement or other document must provide the post office address and telephone number of counsel of record. The names of other members of the Bar of this Court and, if desired, their post office addresses, may be added but counsel of record must be clearly identified. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. Counsel of record may not withdraw, without consent of the court, unless another counsel of record is simultaneously substituted.

Circuit Rule 8. Motions for Stays and Injunctions Pending Appeal

Counsel's obligation under Fed. R. App. P. 8(a) to provide this court with the reasons the district judge gave for denying relief includes an obligation to supply any statement of reasons by a magistrate judge or bankruptcy judge. Filing with the motion a copy of the order or memorandum of decision in which the reasons were stated, or if they were stated orally in open court, a copy of the transcript of proceedings is preferred; but, in an emergency, if such a copy is not available, counsel's statement of the reasons given by the district or bankruptcy court will suffice.

Circuit Rule 9. Motions Concerning Custody Pending Trial or Appeal

(a) All requests for release from custody pending trial shall be by motion. The defendant shall file a notice of appeal followed by a motion.

(b) All requests to reverse orders granting bail or enlargement pending trial or appeal shall be by motion. The government shall file a notice of appeal followed by a motion.

(c) All requests for release from custody after sentencing and pending the disposition of the appeal shall be by motion in the main case. There is no need for a separate notice of appeal.

(d) Any motion filed under this rule shall be accompanied by a memorandum of law.

Circuit Rule 10. Preparation of Record in District Court Appeals

(a) *Record Preparation Duties*. The clerk of the district court shall prepare within 14 days of filing the notice of appeal the original papers, transcripts filed in the district court, and exhibits received or offered in evidence (with the exceptions listed below). The transcript of a deposition

is "filed" within the meaning of this rule, and an exhibit is "received or offered," to the extent that it is tendered to the district court in support of a brief or motion, whether or not the rules of the district court treat deposition transcripts or exhibits as part of the record. These materials may be designated as part of the record on appeal without the need for a motion under Fed. R. App. P. 10(e). Counsel must ensure that exhibits and transcripts to be included in the record which are not in the possession of the district court clerk are furnished to the clerk within ten days after the filing of the notice of appeal. The following items will not be included in a record unless specifically requested by a party by item and date of filing within ten days after the notice of appeal is filed or unless specifically ordered by this court:

briefs and memoranda,
notices of filings,
subpoenas,
summonses,
motions to extend time,
affidavits and admissions of service and mailing,
notices of settings,
depositions and notices, and
jury lists.

(b) *Correction or Modification of Record*. A motion to correct or modify the record pursuant to Rule 10(e), Fed. R. App. P., or a motion to strike matter from the record on the ground that it is not properly a part thereof shall be presented first to the district court. That court's order ruling on the motion will be transmitted to this court as part of the record.

(c) *Order or Certification with Regard to Transcript*. Counsel and court reporters are to utilize the form prescribed by this court when ordering transcripts or certifying that none will be ordered. For specific requirements, see Rules 10(b) and 11(b), Fed. R. App. P.

(d) *Ordering Transcripts in Criminal Cases*.

(1) *Transcripts in Criminal Justice Act Cases*. At the time of the return of a verdict of guilty or, in the case of a bench trial, an adjudication of guilt in a criminal case in which the defendant is represented by counsel appointed under the Criminal Justice Act (C.J.A.), counsel for the defendant shall request a transcript of testimony and other relevant proceedings by completing a C.J.A. Form No. 24 and giving it to the district judge. If the district judge believes an appeal is probable, the judge shall order transcribed so much of the proceedings as the judge believes necessary for an appeal. The transcript shall be filed with the clerk of the district court within 40 days after the return of a verdict of guilty or, in the case of a bench trial, the adjudication of guilt or within seven days after sentencing, whichever occurs later. If the district judge decides not to order the transcript at that time, the judge shall retain the C.J.A. Form No. 24 without ruling. If a notice of appeal is filed later, appointed counsel or counsel for a defendant allowed after trial to proceed on appeal in forma pauperis shall immediately notify the district judge of the filing of a notice of appeal and file or renew the request made on C.J.A. Form No. 24 for a free transcript.

(2) *Transcripts in Other Criminal Cases*. Within 10 days after filing the notice of appeal in other criminal cases, the appellant or appellant's counsel shall deposit with the court reporter the estimated cost of the transcript ordered pursuant to Rule 10(b), Fed. R. App. P., unless the district court orders that the transcript be paid for by the United States. A non-indigent appellant must pay a pro rata share of the cost of a transcript prepared at the request of an indigent

co-defendant under the Criminal Justice Act unless the district court determines that fairness requires a different division of the cost. Failure to comply with this paragraph will be cause for dismissal of the appeal.

(e) *Indexing of Transcript*. The transcript of proceedings to be transmitted to this court as part of the record on appeal (and any copies prepared for the use of the court or counsel in the case on appeal) shall be bound by the reporter in a volume or volumes, with the pages consecutively numbered throughout all volumes. The transcript of proceedings, or the first volume thereof, shall contain a suitable index, which shall refer to the number of the volume as well as the page, shall be cumulative for all volumes, and shall include the following information:

(1) An alphabetical list of witnesses, giving the pages on which the direct and each other examination of each witness begins.

(2) A list of exhibits by number, with a brief description of each exhibit indicating the nature of its contents, and with a reference to the pages of the transcript where each exhibit has been identified, offered, and received or rejected.

(3) A list of other significant portions of the trial such as opening statements, arguments to the jury, and instructions, with a reference to the page where each begins.

When the record includes transcripts of more than one trial or other distinct proceeding, and it would be cumbersome to apply this paragraph to all the transcripts taken together as one, the rule may be applied separately to each transcript of one trial or other distinct proceeding.

(f) *Presentence Reports*. The presentence report is part of the record on appeal in every criminal case. The district court should transmit this report under seal, unless it has already been placed in the public record in the district court. If the report is transmitted under seal, the report may not be included in the appendix to the brief or the separate appendix under Fed. R. App. P. 30 and Circuit Rule 30. Counsel of record may review the presentence report at the clerk's office but may not review the probation officer's written comments and any other portion submitted in camera to the trial judge.

(g) *Effect of Omissions from the Record on Appeal*. When a party's argument is countered by a contention of waiver for failure to raise the point in the trial court or before an agency, the party opposing the waiver contention must give the record cite where the point was asserted and also ensure that the record before the court of appeals contains the relevant document or transcript.

Circuit Rule 11. Record on Appeal

(a) *Record Transmission*. Appellate records from the Eastern Division of the Northern District of Illinois are to be transmitted to the court of appeals when prepared. Prepared appellate records from all other courts in the circuit are to be temporarily retained by the district court clerk's office pursuant to Rule 11(c), Fed.R. App. P. Rule 11(c) certification is not required. After the appeal is ready for scheduling for oral argument or submission, the clerk of the court of appeals will notify the district court clerk to transmit the record to the court of appeals. The parties may agree or the court of appeals may order that the record be sent to the clerk of the court of appeals at an earlier time. But in no event shall the clerk of the district court transmit

bulky items, currency, securities, liquids, drugs, weapons, or similar items without a specific order of this court.

(b) *Transcript and Other Supplemental Transmissions*. When trial or hearing transcripts, or other parts of the record, are filed with the clerk of the district court (or exhibits that have been retained in the district court for use in preparation of the transcript are returned to the clerk) after initial transmission of the record, they shall be immediately transmitted to this court and filed as a supplemental record without the requirement of this court's order. This immediate transmission meets the requirements of Rule 11(b), Fed. R. App. P., that the court reporter notify the clerk of the court of appeals that the transcript has been filed with the clerk of the district court.

(c) *Extension of Time*.

(1) *Requests for Extension to be Addressed to Court of Appeals*. All requests for extension of time for filing the record or parts thereof shall be addressed to the court of appeals.

(2) *Extension of Time for Preparation of Transcript*. Any request by a court reporter for an extension of time longer than 30 days from the date the transcript was first ordered must be filed with the clerk of this court on a form prescribed by the court. The request must include the date the transcript was ordered, the reasons for both that request, and any previous requests for extensions of time, and a certificate that all parties or their counsel have been sent a copy of the request. If the request is for an extension of time longer than 60 days from the date the transcript was first ordered, it must include a statement from the district judge who tried the case or the chief judge of the district court that the request has been brought to that judge's attention and that steps are being taken to insure that all ordered transcripts will be promptly prepared.

(d) *Withdrawal of Record*. During the time allowed for the preparation and filing of a brief, an attorney for a party or a party acting *pro se* may withdraw the record upon giving a receipt to the clerk who has physical custody of the record. Once a panel of judges is assigned, a record may not be withdrawn without an order of the court. Original exhibits may not be withdrawn but may be examined only in the clerk's office. The party who has withdrawn the record may not file a brief or petition for rehearing until the record has been returned to the clerk's office from which it was withdrawn. Except as provided above, the record shall not be taken from a clerk's office without leave of this court on written motion. Failure of a party to return the record to the clerk may be treated as contempt of this court. When the party withdrawing the record is incarcerated, the clerk who has physical custody of the record, on order of this court, will send the record to the warden of the institution with the request that the record be made available to the party under supervised conditions and be returned to the respective clerk before a specified date.

Circuit Rule 12. Docketing the Appeal

(a) *Docketing*. The clerk will notify counsel and parties acting *pro se* of the date the appeal is docketed.

(b) *Caption*. The parties on appeal shall be designated in the title of the cause in court as they appeared in the district court, with the addition of identification of appellant and appellee, for example, John Smith, Plaintiff-Appellee v. William Jones, Defendant-Appellant. Actions seeking habeas corpus shall be designated "Petitioner v. Custodian" and not "United States ex rel. Petitioner v. Custodian." .

Circuit Rule 22. Death Penalty Cases

(a) *Operation and Scope.*

(1) These rule applies to all cases involving persons under sentence of capital punishment.

(2) Cases within the scope of this rule will be assigned to a panel as soon as the appeal is docketed. The panel to which a case is assigned will handle all substantial matters pertaining to the case, including certificates of appealability, stays of execution, consideration of the merits, second or successive petitions, remands from the Supreme Court of the United States, and associated procedural matters. If a judge on the panel is unavailable to participate, another judge may be substituted.

(3) Pursuant to 18 U.S.C. §3006A, and 21 U.S.C. §848(q), 28 U.S.C. §2254(h), and 28 U.S.C. §2255 ¶5, appellate counsel shall be appointed for any person under a sentence of death who is financially unable to obtain representation, requests that counsel be appointed, and does not already have counsel appointed by a state under 28 U.S.C. §2261.

(4) The panel to which a case is assigned may make changes in procedure and scheduling in any case when justice so requires.

(b) *Notice of Appeal and Required Documents*.

(1) The district court clerk must notify the clerk of this court by telephone immediately upon the filing of a notice of appeal of a case within the scope of this rule. In all cases within the scope of this rule, the district court clerk must immediately transmit the record to the court of appeals. A supplemental record may be sent later if items are not currently available.

(2) Upon receipt of the record from the district court clerk, or any petition, application or motion invoking the jurisdiction of this court, the clerk of this court shall docket the appeal. The panel will be immediately notified.

(3) Upon filing a notice of appeal, the appellant shall immediately transmit to the court four copies of, or a citation to, each state or federal court opinion, memorandum decision, order, transcript of oral statement of reasons, or judgment involving an issue to be presented on appeal to this court. If a document or transcript is needed and is not immediately available, appellant shall submit an affidavit as to the decision and reasons given by the court. Appellant shall file the document or transcript as soon as it is available.

(c) *Briefs*.

(1) Unless the court sets another schedule, the following time limitations apply.

(A) On direct appeal in a federal criminal prosecution, the appellant shall serve and file a brief within 63 days after the date on which the appeal is docketed. The appellee shall serve and file a brief within 49 days after service of the brief by the appellant. The appellant may serve and file a reply brief within 21 days after service of the brief by the appellee.

(B) In all other cases within the scope of this rule the appellant will have 28 days from the date on which the notice of appeal is filed to file and serve a brief. The appellee

then will have 21 days from the service of the brief to file and serve a brief. Within seven days after service of the appellee's brief, appellant may file and serve a reply brief.

(2) If an issue is raised that was not presented at a prior stage of the litigation (for example, in the district court, the appropriate state court, or this court on a prior appeal), the party raising the issue must state why the issue was not raised and why relief should nonetheless be granted.

(d) *Submission and Oral Argument*.

(1) The court will hear oral argument in every direct appeal in a federal criminal prosecution and in every appeal from the decision concerning an initial petition under 28 U.S.C. §2254 in a state case. In any other case, a request for oral argument will be evaluated under the standards of Fed. R. App. P. 34(a).

(2) Oral argument will be held expeditiously after the filing of the reply brief.

(3) The merits of an appeal may be decided summarily if the panel decides that an appeal is frivolous. In such a case, the panel may issue a single opinion deciding both the merits of the appeal and the motion for a stay of execution.

(e) *Opinion or Order*.

(1) The panel's decision shall be made without undue delay. In cases to which 28 U.S.C. §2266 applies, the panel's decision will be issued no later than 120 days after the date the reply brief was filed.

(2) In cases in which an execution date has been set and not stayed, the panel will release the decision with dispatch to allow the losing party time to ask for rehearing or consideration by the Supreme Court.

(f) *Panel or En Banc Rehearing*.

(1) Any active judge of the court may, within 14 days after filing of the opinion, notify the panel and the clerk to hold issuance of the mandate and poll the court for en banc consideration. If the mandate has already issued, it may be recalled by the panel or by the en banc court. All judges are to vote within 10 days after the request for the vote on en banc consideration. A judge unable by reason of illness or absence to act within the time allowed by this rule may extend the time to act for a reasonable period upon written notice to the other judges. Unless within 30 days after the petition for rehearing, or the answer to the petition (if one has been requested), is filed, a majority of the panel, or of the judges in active service, has voted to grant rehearing or rehearing en banc, the court will enter an order denying the petition.

(2) If the court decides to rehear an appeal en banc, the appeal will be scheduled for oral argument expeditiously and decided within the time allowed by 28 U.S.C. §2266(c).

(g) *Second or Successive Petitions or Appeals*. A second or successive petition or appeal will be assigned to the panel that handled the first appeal, motion for stay of execution, application for certificate of appealability or other prayer for relief. A motion for leave to commence a second or successive case is governed by Circuit Rule 22.2 and likewise will be assigned to the original panel.

(h) *Stay of Execution.*

(1) A stay of execution is granted automatically (A) on direct appeal in a federal criminal prosecution by Fed. R. Crim. P. 38(a), and (B) in some state cases by 28 U.S.C. §2262(a). A stay of execution is forbidden in some state cases by 28 U.S.C. §2262(b) and (c). All requests with respect to stays of execution over which the court possesses discretion, or in which any party contends that §2262 or Rule 38(a) has not been followed, must be made by motion under this rule.

(2) An appellant may not file a motion to stay execution or to vacate a stay of execution unless there is an appeal accompanied by a certificate of appealability or four copies of a request that this court issue a certificate of appealability together with a copy of the district judge's statement as to why the certificate should not issue. The request for a certificate of appealability and the motion to stay execution shall be decided together.

(3) The movant shall file four copies of the motion and shall immediately notify opposing counsel by telephone. If the following documents have not yet been filed with this court as part of the record, a copy of each shall be filed with each copy of the motion:

(i) certificate of appealability;
(ii) the complaint, petition or motion seeking relief in the district court and the response thereto;
(iii) the district court decision on the merits;

(iv) the motion in the district court to stay execution or vacate stay of execution and the response thereto; and
(v) the district court decision on the motion to stay execution or vacate stay of execution.

If any required document cannot be filed, the movant shall state the reason for the omission.

(4) If an issue is raised that was not presented at a prior stage of the litigation (for example, in the district court, the appropriate state court, or this court on a prior appeal), the party raising the issue must state why the issue was not raised and why relief should nonetheless be granted.

(5) If the attorney for the government has no objection to the motion for stay, the court shall enter an order staying the execution.

(6) Parties shall endeavor to file motions with the clerk during normal business hours. Parties having emergency motions during nonbusiness hours shall call the clerk's telephone number for recorded instructions. The clerk shall promptly notify, by telephone, the designated representatives of the appropriate governmental body or counsel for petitioner of any such motions or other communications received by the clerk during nonbusiness hours. Each side must keep the clerk informed of the home and office telephone number of one attorney who will serve as emergency representative.

(7) An order of the panel granting or denying a motion to issue or vacate a stay of execution shall set forth the reasons for its decision.

(i) *Clerk's List of Cases*. The clerk shall maintain a list by jurisdiction of cases within the

scope of this rule.

(j) *Notification of State Supreme Court Clerk*. The clerk shall send to the state supreme court a copy of the final decision in any habeas corpus case within the scope of this rule.

Circuit Rule 22.2. Successive Petitions for Collateral Review

(a) A request under 28 U.S.C. §2244(b) or the final paragraph of 28 U.S.C. §2255 for leave to file a second or successive petition must include the following information and attachments, in this order:

(1) A short narrative statement of all claims the person wishes to present for decision. This statement must disclose whether any of these claims has been presented previously to any state or federal court and, if it was, how each court to which it was presented resolved it. If the claim has not previously been presented to a federal court, the applicant must state either:

(A) That the claim depends on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court; or

(B) That the factual predicate for the claim could not have been discovered previously through the exercise of due diligence and that the facts, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the applicant guilty of the crime, had there been no constitutional error.

(2) A short narrative statement explaining how the person proposes to establish the requirements mentioned above. An applicant who relies on a new rule of constitutional law must identify the new rule, the case that establishes that rule, and the decision of the Supreme Court that holds this new rule applicable to cases on collateral review.

(3) Copies of all opinions rendered by any state or federal court previously rendered in the criminal prosecution, any appeal, and any collateral attack.

(4) Copies of all prior petitions or motions for collateral review.

(b) A copy of the application, together with all attachments, must be served on the attorney for the appropriate government agency at the same time as the application is filed with the court. The application must include a certificate stating who was served, by what means, and when. If the application is made by a prisoner who is not represented by counsel, Wling and service may be made under the terms of Fed. R. App. P. 4(c).

(c) Except in capital cases in which execution is imminent, the attorney for the custodian (in state cases) or the United States Attorney (in federal cases) may file a response within 14 days. When an execution is imminent, the court will not wait for a response. A response must include copies of any petitions or opinions that the applicant omitted from the papers.

(d) The applicant may file a reply memorandum within 10 days of the response, after which the request will be submitted to a panel of the court for decision.

(e) An applicant’s failure to supply the information and documents required by this rule

will lead the court to dismiss the application, but without prejudice to its renewal in proper form.

Circuit Rule 26. Extensions of Time to File Briefs

Extensions of time to file briefs are not favored. A request for an extension of time shall be in the form of a motion supported by affidavit. The date the brief is due shall be stated in the motion. The affidavit must disclose facts which establish to the satisfaction of the court that with due diligence, and giving priority to the preparation of the brief, it will not be possible to file the brief on time.

In addition, if the time for filing the brief has been previously extended, the affidavit shall set forth the filing date of any prior motions and the court's ruling thereon. All factual statements required by this rule shall be set forth with specificity. Generalities, such as that the purpose of the motion is not for delay, or that counsel is too busy will not be sufficient.

Grounds that may merit consideration are:

(1) Engagement in other litigation, provided such litigation is identified by caption, number, and court, and there is set forth (a) a description of action taken on a request for continuance or deferment of other litigation; (b) an explanation of the reasons why other litigation should receive priority over the case in which the petition is filed; and (c) other relevant circumstances including why other associated counsel cannot either prepare the brief for filing or, in the alternative, relieve the movant's counsel of the other litigation claimed as a ground for extension.

(2) The matter under appeal is so complex that an adequate brief cannot reasonably be prepared by the date the brief is due, provided that the complexity is factually demonstrated in the affidavit.

(3) Extreme hardship to counsel will result unless an extension is granted, in which event the nature of the hardship must be set forth in detail.

The motion shall be filed at least five days before the brief is due, unless it is made to appear in the motion that the facts which are the basis of the motion did not exist earlier or were not, or with due diligence could not have been, known earlier to the movant's counsel. Notice of the fact that an extension will be sought must be given to the opposing counsel together with a copy of the motion prior to the filing thereof.

In criminal cases, or in other cases in which a party may be in custody (including military service), a statement must be set forth in the affidavit as to the custodial status of the party, including the conditions of the party's bail, if any.

Circuit Rule 26.1. Disclosure Statement

(a) *Who Must File*. Every attorney for a non-governmental party or amicus curiae, and every private attorney representing a governmental party, must file a statement under this rule. A party or amicus required to file a corporate disclosure statement under Fed. R. App. P. 26.1 may combine the information required by subsection (b) of this rule with the statement required by the national rule.

(b) *Contents of Statement*. The statement must disclose the names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court.

(Adopted as amended Sept. 22, 1999)

Circuit Rule 28. Briefs

Briefs must conform to Fed. R. App. P. 28 and the additional provisions in Circuit Rules 12(b), 30 and 52. The following requirements supplement those in the corresponding provisions of Fed. R. App. P. 28:

(a) *Appellant's Jurisdictional Statement*. The jurisdictional statement in appellant's brief, see Fed. R. App. P. 28(a)(4), must contain the following details:

(1) The statement concerning the district court's jurisdiction shall identify the provision of the constitution or federal statute involved if jurisdiction is based on the existence of a federal question. If jurisdiction depends on diversity of citizenship, the statement shall identify the jurisdictional amount and the citizenship of each party to the litigation. If any party is a corporation, the statement shall identify both the state of incorporation and the state in which the corporation has its principal place of business. If any party is an unincorporated association or partnership the statement shall identify the citizenship of all members. The statement shall supply similar details concerning the invocation of supplemental jurisdiction or other sources of jurisdiction.

(2) The statement concerning appellate jurisdiction shall identify the statutory provision believed to confer jurisdiction on this court and the following particulars:

(i) The date of entry of the judgment or decree sought to be reviewed.
(ii) The filing date of any motion for a new trial or alteration of the judgment or any other motion claimed to toll the time within which to appeal.
(iii) The disposition of such a motion and the date of its entry.
(iv) The filing date of the notice of appeal (together with information about an extension of time if one was granted).
(v) If the case is a direct appeal from the decision of a magistrate judge, the dates on which each party consented in writing to the entry of final judgment by the magistrate judge.

(3) If the appeal is from an order other than a final judgment which adjudicates all of the claims with respect to all parties, counsel shall provide the information necessary to enable the court to determine whether the order is immediately appealable. Elaboration will be necessary in the following cases although the list is illustrative rather than exhaustive:

(i) If any claims or parties remain for disposition in the district court, identify the nature of these claims and the ground on which an appeal may be taken in advance of the final judgment. If there has been a certificate under Fed. R. Civ. P. 54(b) or if this is an appeal by permission under 28 U.S.C. § 1292(b), give the particulars and describe the relation between the claims or parties subject to the appeal and the claims or parties remaining in the district court.

(ii) If the ground of jurisdiction is the "collateral order doctrine," describe how the order meets each of the criteria of that doctrine: finality, separability from the merits of the underlying action, and practical unreviewability on appeal from a final judgment. Cite pertinent cases establishing the appealability of orders of the character involved.

(iii) If the order sought to be reviewed remands a case to a bankruptcy judge or administrative agency, explain what needs to be done on remand and why the order is nonetheless "final."

(iv) Whenever some issues or parties remain before the district court, give enough information to enable the court to determine whether the order is appealable. Appeals from orders granting or staying arbitration or abstaining from decision as well as appeals from the grant or denial of injunctions require careful exposition of jurisdictional factors.

(b) *Appellee's Jurisdictional Statement*. The appellee's brief shall state explicitly whether or not the jurisdictional summary in the appellant's brief is complete and correct. If it is not, the appellee shall provide a complete jurisdictional summary.

(c) *Statement of the Facts*. The statement of the facts required by Fed. R. App. P. 28(a)(7) shall be a fair summary without argument or comment. No fact shall be stated in this part of the brief unless it is supported by a reference to the page or pages of the record or the appendix where that fact appears.

(d) *Brief in Multiple Appeals*.

(1) *Order and Number of Briefs*.

(a) If a cross-appeal is filed, the clerk will designate which party will file the opening brief, and will set a briefing schedule. The adverse party may file a combined responsive brief and opening brief in its own appeal. This brief may not exceed the page limitation for principal briefs. The party that filed the opening brief may file a combined responsive brief to the cross-appeal and reply brief in its own appeal. This brief may not exceed the page limitation for reply briefs.

(b) The court will entertain motions for realignment of the briefing schedule and enlargement of the number of pages when the norm established by this rule proves inappropriate. Because it is improper to take a cross-appeal in order to advance additional arguments in support of a judgment, the court will not grant motions under this subsection by cross-appellants that do not seek to enlarge their rights under the judgment.

(2) *Captions of Briefs in Multiple Appeals*. When two or more parties file cross-appeals or other separate but related appeals, the briefs shall bear the appellate case numbers and captions of all related appeals.

(e) *Citation of Supplemental Authority*. Counsel shall file the original letter and ten copies of supplemental authorities drawn to the court’s attention under Fed. R. App. P. 28(j).

(f) *Citation to the United States Reports*. Citation to the opinions of the Supreme Court of the United States must include the Volume and page of the United States Reports, once the citation is available.

Circuit Rule 30. Appendices

(a) *Contents*. The appellant shall submit, bound with the main brief, an appendix containing the judgment or order under review and any opinion, memorandum of decision, findings of fact and conclusions of law, or oral statement of reasons delivered by the trial court or administrative agency upon the rendering of that judgment, decree, or order.

(b) *Additional Contents*. The appellant shall also include in an appendix:

(1) Copies of any other opinions, orders, or oral rulings in the case that address the issues sought to be raised. If the appellant's brief challenges any oral ruling, the portion of the transcript containing the judge's rationale for that ruling must be included in the appendix.

(2) Copies of any opinions or orders in the case rendered by magistrate judges or bankruptcy judges that address the issues sought to be raised.

(3) Copies of all opinions, orders, findings of fact and conclusions of law rendered in the case by administrative agencies (including their administrative law judges and adjudicative officers such as administrative appeals judges, immigration judges, members of boards and commissions, and others who serve functionally similar roles). This requirement applies whether the original review of the administrative decision is in this court or was conducted by the district court.

(4) If this is a collateral attack on a criminal conviction, then the appendix also must include copies of all opinions by any federal court or state appellate court previously rendered in the criminal prosecution, any appeal, and any earlier collateral attack.

(5) An order concerning a motion for new trial, alteration or amendment of the judgment, rehearing, and other relief sought under Rules 52(a) or 59, Fed. R. Civ. P.

(6) Any other short excerpts from the record, such as essential portions of the pleading or charge, disputed provisions of a contract, pertinent pictures, or brief portions of the transcript, that are important to a consideration of the issues raised on appeal.

(7) The documents in (b) may also be placed in the appendix bound with the brief if these documents when added to the required appendix in (a) do not exceed fifty pages.

(c) *Appendix to the brief of a Cross-Appellant*. The brief of a cross-appellant must comply with this rule, but it need not include materials contained in the appendix of the appellant.

(d) *Statement that All Required Materials are in Appendix*. The appendix to each appellant's brief shall contain a statement that all of the materials required by parts (a) and (b) of this rule are included. If there are no materials within the scope of parts (a) and (b) of this rule, counsel shall so certify.

(e) *Stipulated Joint Appendix and Supplemental Appendices*. The parties may file a stipulated joint appendix. A supplemental appendix, containing material not included in an appendix previously filed, may be filed with the appellee's brief. An appendix should not be lengthy, and costs for a lengthy appendix will not be awarded.

(f) *Indexing of Appendix*. If a party elects to file an appendix containing portions of the transcript of proceedings, it shall contain an index of the portions of the transcript contained therein in the form and detail described in Circuit Rule 10(e) as well as a complete table of contents.

Circuit Rule 31. Filing of Briefs and Failure to Timely File Briefs

(a) *Time for Filing Briefs*. Except in agency cases, the time for filing briefs shall run from the date the appeal is docketed, regardless of the completeness of the record at the time of docketing, unless the court orders otherwise.

(b) *Number of Briefs Required*. The clerk of this court is authorized to accept 15 copies of briefs as substantial compliance with Rule 31(b), Fed. R. App. P. Appointed counsel shall also file 15 copies.

(c) *Failure of Appellant to File Brief*. When an appellant's original brief is not filed when it is due, the procedure shall be as follows:

(1) *All Criminal Cases in Which the Defendant Has Counsel and Civil Cases With Court-Appointed Counsel*. The clerk shall enter an order directing counsel to show cause within 14 days why disciplinary action should not be taken. The court will then take appropriate action.

(2) *All Other Cases*. The clerk shall enter an order directing counsel, or a pro se appellant, to show cause why the appeal should not be dismissed. The court will then take appropriate action.

(d) *Failure of Appellee to File Brief*. When an appellee's brief is not filed on time, the clerk shall enter an order requiring the appellee to show cause within 14 days why the case should not be treated as ready for oral argument or submission and the appellee denied oral argument. The court will then take appropriate action.

(e) *Digital Media*. One copy of each brief must be filed on digital media. The disk must contain nothing more than the text of the brief, and the label of the disk must include the case name and docket number. One copy of the disk must be served on each party separately represented by counsel. Filing and service under this subsection are not required if counsel certifies that the text of the brief is not available on digital media.

Circuit Rule 32. Form of a Brief

A brief need not comply with the 14-point-type requirement in Fed. R. App. P. 32(a)(5)(A). A brief is acceptable if proportionally spaced type is 12 points or larger in the body of the brief, and 11 points or larger in footnotes.

Circuit Rule 33. Prehearing Conference

At the conference the court may, among other things, examine its jurisdiction, simplify and define issues, consolidate cases, establish the briefing schedule, set limitations on the length of briefs, and explore the possibility of settlement.

Circuit Rule 34. Oral Argument

(a) *Notice to Clerk*. The names of counsel intending to argue orally shall be furnished to the clerk not later than two days before the argument.

(b) *Calendar*.

(1) The calendar for a particular day will generally consist of three appeals scheduled for oral argument at 9:30 a.m., one appeal scheduled for oral argument at 10:30 a.m., and two appeals scheduled for oral argument at 2:00 p.m. The amount of time allotted for oral argument will be set based on the nature of the case. The clerk will notify counsel of the allocation approximately 21 days before the argument. The types of cases listed below are to be given priority, though the sequence of listing here is not intended to indicate relative priority among the types of cases.

(i) Appeal from an order of confinement after refusal of an immunized witness to testify before the grand jury. (These appeals must be decided within 30 days.) 28 U.S.C. § 1826.

(ii) Criminal Appeals. Rule 45(b), Fed. R. App. P.

(iii) Appeals from orders refusing or imposing conditions of release, which will be heard without the necessity of briefs. Rule 9, Fed. R. App. P.

(iv) Appeals involving issues of public importance.

(v) Habeas corpus and 28 U.S.C. § 2255 appeals.

(vi) Appeals from the granting, denying, or modifying of injunctions.

(vii) Petitions for writs of mandamus and prohibition and other extraordinary writs. Rule 21(b) and (c), Fed. R. App. P.

(viii) "Any other action if good cause therefore is shown. For purposes of this subsection, 'good cause' is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of Title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit." 28 U.S.C. § 1657.

(2) Consideration will be given to requests addressed to the clerk by out-of-town counsel to schedule more than one appeal for oral argument the same day in order to minimize travel time and expenses.

(3) Requests by counsel, made in advance of the scheduling of an appeal for oral argument, that the court avoid scheduling the oral argument for a particular day or week will be respected, if possible.

(4) Once an appeal has been scheduled for oral argument, the court will not ordinarily reschedule it. Requests under subparagraphs (2) and (3) of this paragraph should therefore be made as early as possible. Counsel should have in mind that, when practicable, criminal appeals are scheduled for oral argument shortly after the appellant's brief is filed

and civil appeals shortly after the appellee's brief is filed.

(c) *Divided Argument Not Favored*. Divided arguments on behalf of a single party or multiple parties with the same interests are not favored by the court. When such arguments are nevertheless divided or when more than one counsel argues on the same side for parties with differing interests, the time allowed shall be apportioned between such counsel in their own discretion. If counsel are unable to agree, the court will allocate the time.

(d) *Preparation*. In preparing for oral arguments, counsel should be mindful that this court follows the practice of reading briefs prior to oral argument.

(e) *Waiver or Postponement*. Any request for waiver or postponement of a scheduled oral argument must be made by formal motion, with proof of service on all other counsel or parties. Postponements will be granted only in extraordinary circumstances.

(f) *Statement Concerning Oral Argument*. A party may include, as part of a principal brief, a short statement explaining why oral argument is (or is not) appropriate under the criteria of Fed. R. App. P. 34(a).

(g) *Citation of Authorities at Oral Argument*. Counsel may not cite or discuss a case at oral argument unless the case has been cited in one of the briefs or drawn to the attention of the court and opposing counsel by a filing under Fed R. App. P. 28(j). The filing may be made on the day of oral argument, if absolutely necessary, but should be made sooner.

Circuit Rule 35. Petitions for Rehearing En Banc

Every petition for rehearing en banc, and every brief of an amicus curiae supporting or opposing a petition for rehearing en banc, must include a statement providing the information required by Fed. R. App. P. 26.1 and Circuit Rule 26.1 as of the date the petition is filed.

(Adopted Sept. 22, 1999)

Circuit Rule 36. Reassignment of Remanded Cases

Whenever a case tried in a district court is remanded by this court for a new trial, it shall be reassigned by the district court for trial before a judge other than the judge who heard the prior trial unless the remand order directs or all parties request that the same judge retry the case. In appeals which are not subject to this rule by its terms, this court may nevertheless direct in its opinion or order that this rule shall apply on remand.

Circuit Rule 39. Costs of Printing Briefs and Appendices

The cost of printing or otherwise producing copies of briefs and appendices shall not exceed the maximum rate per page as established by the clerk of the court of appeals. If a commercial printing process has been used, a copy of the bill must be attached to the itemized and verified bill of costs filed and served by the party.

Circuit Rule 40. Petitions for Rehearing

(a) *Table of Contents*. The petition for rehearing shall include a table of contents with page references and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.

(b) *Number of Copies*. Fifteen copies of a petition for rehearing shall be filed, except that 30 shall be filed if the petitioner suggests rehearing en banc.

(c) *Time for Filing After Decision in Agency Case*. The date on which this court enters a final order or files a dispositive opinion is the date of the "entry of judgment" for the purpose of commencing the period for filing a petition for rehearing in accordance with Fed. R. App. P. 40, notwithstanding the fact that a formal detailed judgment is entered at a later date.

(d) *Time for Filing after Decision from the Bench*. The time limit for filing a petition for rehearing shall run from the date of this court's written order following a decision from the bench.

(e) *Rehearing Sua Sponte before Decision*. A proposed opinion approved by a panel of this court adopting a position which would overrule a prior decision of this court or create a conflict between or among circuits shall not be published unless it is first circulated among the active members of this court and a majority of them do not vote to rehear en banc the issue of whether the position should be adopted. In the discretion of the panel, a proposed opinion which would establish a new rule or procedure may be similarly circulated before it is issued. When the position is adopted by the panel after compliance with this procedure, the opinion, when published, shall contain a footnote worded, depending on the circumstances, in substance as follows:

This opinion has been circulated among all judges of this court in regular active service. (No judge favored, or, A majority did not favor) a rehearing en banc on the question of (e.g., overruling *Doe v. Roe*.)

Circuit Rule 41. Immediate Issuance of Mandate After Certain Dispositions

The mandate will issue immediately when an appeal is dismissed (1) voluntarily, (2) for failure to pay the docket fee, (3) for failure to file the docketing statement under Circuit Rule 3(c), or (4) for failure by the appellant to file a brief.

Circuit Rule 43. Change in Public Offices

Whenever any of the parties to the litigation appears in an official capacity and there is a change in the occupant of the office after the filing of the Rule 3(c)(1) docketing statement, the official-capacity litigant (other than a member of the Cabinet) must notify the court of the identity of the new occupant of the office. Similarly, in collateral attacks on confinement, the parties must notify the court of any change in custodian or custodial status.

Circuit Rule 45. Fees

(a) *Fees To Be Collected by the Clerk.* The fees to be collected by the clerk are as follows:

(1) For docketing a case on appeal or review, or docketing any other proceeding, $100. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed.

(2) For every search of the records of the court and certifying the results of the same, $15.

(3) For certifying or exemplifying any document or paper, whether the certification or exemplification is made directly on the document, or by separate instrument, $5.

(4) For reproducing any record or paper, 50 cents per page. This fee does not include certification.

(5) For reproduction of magnetic tape audio recordings, either cassette or reel-to-reel, $15.

(6) For each printed copy of any opinion, including any separate and dissenting opinions in the case, regardless of whether the copy is certified, $2, but no charge shall be assessed for:

(i) A copy of the opinion furnished to each party of record in the case, and

(ii) Copies of opinions furnished those appearing upon a "Public Interest List" established by order of the court in the interest of providing proper and adequate media of dissemination to the general public.

(7) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $25.

(8) For a check paid into the court which is returned for lack of funds, $25.

(9) No other fees for miscellaneous services than those prescribed by the Judicial Conference of the United States shall be charged or collected by any clerk of court.

(b) *Fees To Be Paid in Advance*. The clerk shall not be required to docket any proceeding or perform any other service until all fees due to the clerk have been paid, except at the direction of a judge of this court or at the instance of a party who is entitled to proceed without prepayment of fees.

Circuit Rule 46. Attorneys

(a) *Admission*. The lead attorney for all parties represented by counsel in this court must be admitted to practice in this court. Counsel have thirty days from docketing of the matter in this court to comply. In addition, any attorney who orally argues an appeal must be admitted to practice in this court. An applicant for admission to the bar of this court shall file with the clerk an application on the form furnished by the clerk. The oath or affirmation thereon may be taken

before any officer authorized by federal or state law to administer an oath. When an appropriate application and motion have been filed and fee tendered, if a fee be required, the clerk shall present the papers to an active or senior circuit judge for action in chambers unless the applicant requests admission in open court. If admission is in open court, the applicant must appear in person and the sponsor shall make an oral motion in support of the written application. If admission is in chambers, the applicant and sponsor need not appear.

(b) *Admission Fees*. The prescribed fee for admission is $15.00, except that attorneys who have been appointed by the district court or this court to represent a party on appeal in forma pauperis, law clerks to judges of this court or the district courts, and attorneys employed by the United States or any agency thereof need not pay the fee. The clerk shall receive the fee as trustee of the lawyers fund and shall deposit it in a bank designated by the court. Payments from the fund shall be made for the purchase of law books, for library conveniences, or other court purposes, by checks duly signed by the clerk as trustee and countersigned by two judges of this court.

(c) *Government Attorneys*. Attorneys for any federal, state or local government office or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.

(d) *Striking a Name from the Roll of Attorneys*. Whenever it is shown to this court that any members of its bar have been disbarred or suspended from practice, or their names have been stricken from the roll of attorneys, in any state, or the District of Columbia, they will be forthwith suspended from practice before this court. They will thereupon be afforded the opportunity to show cause, within 30 days, why their names should not be stricken from the roll of attorneys admitted to practice before this court. Upon the attorney's response to the rule to show cause, or upon the expiration of the 30 days if no response is made, this court will enter an appropriate order.

Circuit Rule 47. Advisory Committee

The court shall appoint an Advisory Committee to provide a forum for continuing study of the procedures of the court and to serve as a conduit between members of the bar who have suggestions for change and the court, which retains ultimate responsibility for effectuating change. The committee shall consist of one district judge, one law school professor, and two attorneys from each state of the circuit, Illinois, Indiana, and Wisconsin, and, as ex officio members, the President and First Vice-President of the Seventh Circuit Bar Association, the Circuit Executive, the Senior Staff Attorney, and the Clerk of this court. The district judges, attorneys, and law school professors on the committee shall serve three-year terms with the appointments being staggered.

The court shall appoint a chairman from the membership of the committee to serve for a two-year term. The advisory committee shall promulgate its own rules, and call its own meetings. The advisory committee shall arrange for notice of proposed rule changes and shall consider comments received. From time to time, as it deems necessary or advisable, it shall make recommendations to the circuit council or to the court. Suggestions for consideration by the advisory committee may be filed with the clerk of this court.

Circuit Rule 50. Judges to Give Reasons when Dismissing a Claim, Granting Summary Judgment, or Entering an Appealable Order

Whenever a district court resolves any claim or counterclaim on the merits, terminates the litigation in its court (as by remanding or transferring the case, or denying leave to proceed in forma pauperis with or without prejudice), or enters an interlocutory order that may be appealed to the court of appeals, the judge shall give his or her reasons, either orally on the record or by written statement. The court urges the parties to bring to this court's attention as soon as possible any failure to comply with this rule.

Circuit Rule 51. Duties of Counsel on Appeal; Summary Disposition of Certain Appeals by Convicted Persons; Waiver of Appeal

(a) *Duties of Criminal Trial Counsel***.**

Trial counsel in a criminal case, whether retained or appointed by the district court, is responsible for the continued representation of the client desiring to appeal unless specifically relieved by the court of appeals upon a motion to withdraw. Such relief shall be freely granted. If trial counsel was appointed by the district court and a notice of appeal has been filed, trial counsel will be appointed as appellate counsel without further proof of the client's eligibility for appointed counsel. If the client was not found to be eligible for Criminal Justice Act representation in the district court but appears to qualify on appeal, trial counsel must immediately assist the client in filing in the district court a motion to proceed as one who is financially unable to obtain an adequate defense in a criminal case. This motion must be accompanied by an affidavit containing substantially the same information as contained in Form 4 of the Appendix to the Federal Rules of Appellate Procedure. If the motion is granted, the court of appeals will appoint trial counsel as appellate counsel unless the district court informs the court of appeals that new counsel should be appointed. If the motion is denied by the district court, trial counsel may file a similar motion in the court of appeals. Counsel may have additional duties under Part V of the Circuit's Plan implementing the Criminal Justice Act of 1964.

(b) *Withdrawal of Court-Appointed Counsel in a Criminal Case*. When representing a convicted person in a proceeding to review the conviction, court-appointed counsel who files a brief characterizing an appeal as frivolous and moves to withdraw (see *Anders v. California*, 386 U.S. 738 (1967); *United States v. Edwards*, 777 F.2d 364 (7th Cir. 1985)) shall file with the brief a proof of service which also indicates the current address of the client. Except as provided in paragraph (g) of this rule, the clerk shall then send to the client by certified mail, return receipt requested, a copy of the brief and motion, with a notice in substantially the form set out in Appendix I to these rules. The same procedures shall be followed by court-appointed counsel and the clerk when a motion to dismiss the appeal has been filed by the appellee and the appellant's counsel believes that any argument that could be made in opposition to the motion would be frivolous.

(c) *Time for Filing Motion to Withdraw in a Criminal Case*.
Any motion to withdraw for good cause (other than the frivolousness of an appeal) must be filed in the court of appeals within 10 days of the notice of appeal. The court of appeals will make all appellate appointments.

(d) *Notice of Motion to Dismiss Pro Se Appeal*. When a convicted person appears *pro se* in a proceeding to review the conviction, and the government moves to dismiss the appeal for a reason other than failure to file a brief on time, the clerk shall, unless paragraph (e) of this rule applies, send to the convicted person by certified mail, return receipt requested, a copy of the motion with a notice in substantially the form set out in Appendix II to these rules.

(e) *Dismissal if No Response*. If no response to a notice under paragraph (a) or (b) of this rule is received within 30 days after the mailing, the appeal may be dismissed.

(f) *Voluntary Waiver of Appeal*. Notwithstanding the preceding paragraphs, if the convicted person consents to dismissal of the appeal after consultation with appellate counsel, the appeal may be dismissed upon the filing of a motion accompanied by an executed acknowledgment and consent in substantially the form set out in Appendix III to these rules. See Rule 42(b), Fed. R. App. P.

(g) *Incompetent Appellant*. If, in a case in which paragraph (a) or (b) of this rule would otherwise be applicable, the convicted person has been found incompetent or there is reason to believe that person is incompetent, the motion shall so state and the matter shall be referred directly to the court by the clerk for such action as law and justice may require.

Circuit Rule 52. Certification of Questions of State Law

(a) When the rules of the highest court of a state provide for certification to that court by a federal court of questions arising under the laws of that state which will control the outcome of a case pending in the federal court, this court, sua sponte or on motion of a party, may certify such a question to the state court in accordance with the rules of that court, and may stay the case in this court to await the state court's decision of the question certified. The certification will be made after the briefs are filed in this court. A motion for certification shall be included in the moving party's brief.

(b) If the state court decides the certified issue, then within 21 days after the issuance of its opinion the parties must file in this court statements of their positions about what action this court should take to complete the resolution of the appeal.

Circuit Rule 53. Plan for Publication of Opinions of the Seventh Circuit Promulgated Pursuant to Resolution of the Judicial Conference of the United States

(a) *Policy*. It is the policy of the circuit to reduce the proliferation of published opinions.

(b) *Publication.* The court may dispose of an appeal by an order or by an opinion, which may be signed or per curiam. Orders shall not be published and opinions shall be published.

(1) "Published" or "publication" means:

(i) Printing the opinion as a slip opinion;
(ii) Distributing the printed slip opinion to all federal judges within the circuit, legal publishing companies, libraries and other regular subscribers, interested United States attorneys, departments and agencies, and the news media; and

(iii) Unlimited citation as precedent.

(2) Unpublished orders:

(i) Shall be typewritten and reproduced by copying machine;

(ii) Shall be distributed only to the circuit judges, counsel for the parties in the case, the lower court judge or agency in the case, and the news media, and shall be available to the public on the same basis as any other pleading in the case;

(iii) Shall be available for listing periodically in the Federal Reporter showing only title, docket number, date, district or agency appealed from with citation of prior opinion (if reported), and the judgment or operative words of the order, such as "affirmed," "enforced," "reversed," "reversed and remanded," and so forth;

(iv) Except to support a claim of res judicata, collateral estoppel or law of the case, shall not be cited or used as precedent

(A) in any federal court within the circuit in any written document or in oral argument; or

(B) by any such court for any purpose.

(c) *Guidelines for Method of Disposition.*

(1) *Published opinions.*

A published opinion will be filed when the decision

(i) establishes a new, or changes an existing rule of law;

(ii) involves an issue of continuing public interest;

(iii) criticizes or questions existing law;

(iv) constitutes a significant and non-duplicative contribution to legal literature

(A) by a historical review of law,

(B) by describing legislative history, or

(C) by resolving or creating a conflict in the law;

(v) reverses a judgment or denies enforcement of an order when the lower court or agency has published an opinion supporting the judgment or order; or

(vi) is pursuant to an order of remand from the Supreme Court and is not rendered merely in ministerial obedience to specific directions of that Court.

(2) *Unpublished orders.*

When the decision does not satisfy the criteria for publication, as stated above, it will be filed as an unpublished order. The order will ordinarily contain reasons for the judgment, but may not do so if the court has announced its decision and reasons from the bench. A statement of facts may be omitted from the order or may not be complete or detailed.

(d) *Determination of Whether Disposition is to be by Order or Opinion*.

(1) The determination to dispose of an appeal by unpublished order shall be made by a majority of the panel rendering the decision.

(2) The requirement of a majority represents the policy of this circuit. Notwithstanding the right of a single federal judge to make an opinion available for publication, it is expected that a single judge will ordinarily respect and abide by the opinion of the majority in determining whether to publish.

(3) Any person may request by motion that a decision by unpublished order be issued as a published opinion. The request should state the reasons why the publication would be consistent with the guidelines for method of disposition set forth in this rule.

(e) Except to the purposes set forth in Circuit Rule 53(b)(2)(iv), no unpublished opinion or order of any court may be cited in the Seventh Circuit if citation is prohibited in the rendering court.

Circuit Rule 54. Remands from Supreme Court

When the Supreme Court remands a case to this court for further proceedings, counsel for the parties shall, within 21 days after the issuance of a certified copy of the Supreme Court's judgment pursuant to its Rule 45.3, file statements of their positions as to the action which ought to be taken by this court on remand.

Circuit Rule 55. Prohibition of Photographs and Broadcasts

The taking of photographs in, or radio or television broadcasting from the courtroom or any other place on the 27th floor or judges' chambers or corridors adjacent thereto on the 26th floor of the Federal Courthouse located at 219 South Dearborn Street, Chicago, Illinois, without permission of the court, is prohibited.

Circuit Rule 56. Opportunity to Object and Make Proposals on the Record

(a) *Opportunity to State Objections and their Rationale*. Whenever a rule of court requires concrete proposals or objections and reasons in order to preserve a claim for appeal (e.g., Fed. R. Civ. P. 51, Fed. R. Crim. P. 30, Fed R. Evid. 103(a)), the judge must ensure that parties have an adequate opportunity to put their proposals, objections, and reasons on the record. When the judge entertains proposals or objections off the record (for example, a sidebar conference or a jury instruction conference in chambers), as soon as practicable the judge must offer an opportunity to summarize on the record the proposal or objection discussed, and the reasons for the proposal or objection. The judge then must state the ruling made.

(b) *Waiver*. Parties offered an opportunity to make a record under part (a) of this rule must use it in order to preserve a position for appeal. No proposal, objection, or reason may be urged as a ground of appeal unless placed on the record. A lawyer who believes that he or she has not been given an adequate opportunity to make a record under this rule must so state on the record. This rule does not alter any obligation imposed by any other rule to make concrete proposals or to state objections and reasons in order to preserve a claim for appeal.

Circuit Rule 57. Remands for Revision of Judgment

A party who during the pendency of an appeal has filed a motion under Fed. R. Civ. P. 60(a) or 60(b), Fed. R. Crim. P. 35(b), or any other rule that permits the modification of a final judgment, should request the district court to indicate whether it is inclined to grant the motion. If the district court so indicates, this court will remand the case for the purpose of modifying the judgment. Any party dissatisfied with the judgment as modified must file a fresh notice of appeal.

Circuit Rule 60. Seventh Circuit Judicial Conference

(a) *Purpose of the Conference*. Each year the Chief Judge shall call a circuit judicial conference in accordance with 28 U.S.C. § 333 for the purpose of considering the business of courts and advising means of improving the administration of justice within the circuit. The Chief Judge shall designate the location of the conference and either preside at it or designate officers of the Seventh Circuit Bar Association, or others, to preside.

(b) *Members of the Conference*. Each active Circuit, District, Bankruptcy, and Magistrate Judge of the Circuit shall be a member of the conference. The following shall be members of the conference and are encouraged to attend: (1) Senior Circuit, District and Bankruptcy Judges; (2) Circuit Executive, Deputy Circuit Executive, Senior Staff Attorney for the Seventh Circuit, staff attorneys and law clerks to all Circuit, District, Bankruptcy, and Magistrate Judges; (3) Clerks of the Court of Appeals, District Courts and Bankruptcy Courts in the Circuit; (4) United States Attorneys in the Circuit and their legal staffs; (5) Federal Defenders in the Circuit and their legal staffs; (6) Members of the Seventh Circuit Bar Association; (7) Special guests invited by the Chief Judge or by the President of the Seventh Circuit Bar Association with the approval of the Chief Judge; (8) United States Trustees in the Circuit and their legal staffs.

(c) *Planning of the Conference*. The Judicial Conference shall be planned by a committee composed of eight persons, four judges appointed annually by the Chief Judge from the active judges in the Circuit and four members of the Seventh Circuit Bar Association appointed annually by the President of the Bar Association. The Chief Judge, after consultation with the President of the Bar Association, shall designate one of the members to chair the committee.

(d) *Executive Session*. All or part of one day of the conference shall be designated by the Chief Judge as an executive session to be attended only by active Circuit, District and Bankruptcy Judges, Magistrate Judges and other court personnel.

(e) *Record of the Conference*. The Clerk of the Court of Appeals shall make and preserve a record of the proceedings at the Judicial Conference.